

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

SAM GLASSCOCK III
VICE CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: July 3, 2013

Date Decided: July 9, 2013

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Re: Beatriz Valdes, *et al.* v. MCH Mariner's Cove, LLC *et al.*
Civil Action No. 7019-VCG

Dear Counsel:

This Letter Opinion and Order contains my decision on the Defendants' Motion to Dismiss with prejudice for failure to prosecute. For the reasons that follow, that Motion is granted.

The Complaint in this matter was filed 18 months ago. The Plaintiffs own a house trailer on a leased lot in the Defendants' trailer park on Long Neck. The Plaintiffs desired to sell their trailer to a third party, a transaction that was contingent upon a transfer of the lot lease to the purchaser. According to the Complaint, the Defendants refused to approve the lease transfer unless the Plaintiffs agreed to pay for the removal of an abandoned oil tank on the leasehold.¹ The Plaintiffs contend that this was a violation of the lease agreement. They

¹ Compl. ¶ 13.

sought damages and also injunctive relief compelling the Defendants to assign the lease and prohibiting the Defendants “from forcing Plaintiffs, and other tenants, [to clean] up contaminated soil.”² The Plaintiffs served discovery requests on May 7, 2012. After that, other than a substitution of counsel on the part of the Defendants, no action took place in this case for over a year. On May 15, 2013, the Register in Chancery sent a letter notifying the parties that the matter was subject to dismissal under Chancery Court Rule 41(e), for failure to prosecute for more than one year.³ This Court received no response for six weeks after that letter was issued. On June 26, 2013, the Plaintiffs moved for a voluntary dismissal without prejudice.

In their Motion, the Plaintiffs concede that the Defendants have removed the oil tank from the leasehold and have consented to a transfer of the lease. Meanwhile, the third party buyer has decided not to proceed with the sale. The Motion states that “although the equitable claims have been resolved, Plaintiffs have monetary claims which they could pursue against Defendants. However, said monetary claims are relatively small in nature and Plaintiffs, who are both elderly, have some uncertainty about whether to pursue monetary claims or not.”⁴ The

² *Id.* ¶ 33.

³ Ct. Ch. R. 41(e) provides:

[I]n each cause pending wherein no action has been taken for a period of 1 year, the Court may . . . enter an order dismissing such cause unless good reason for the inaction is given, or the parties have stipulated with the approval of the Court as to such matter.

⁴ Pls.’ Mot. Vol. Dismissal ¶ 4.

Motion seeks dismissal without prejudice and notes the Defendants' opposition to such a dismissal.

The following day, June 27, 2013, the Defendants moved to dismiss *with* prejudice, citing Rule 41(e). On June 28, 2013, I received a letter from the Plaintiffs' counsel. That letter states that before May 2012, the parties had agreed to a settlement in principle of the equitable claims. The matter languished while the third-party buyer dithered about completing the purchase. The letter does not explain, however, why the Plaintiffs failed to pursue their claim for monetary damages during that time. The record is simply devoid of any explanation for the delay, other than the Plaintiffs' statement that they are "elderly" and that the damages claim is "relatively small", and thus, presumably, of questionable net value as a chose-in-action.

Assuming that the June 28 letter was intended as a response to the Defendants' Motion to Dismiss with Prejudice, I sent a letter to Plaintiffs' counsel on July 2, 2013 asking for a definitive answer as to whether the Plaintiffs wished to go forward with their claims or have the matter dismissed with prejudice. As a matter of equity and rational use of litigants' resources, a dismissal without prejudice did not, and does not, seem to me a reasonable option. The matter has been pending for 18 months and has not been litigated by either party for over a year. The Plaintiffs' only rationale for not prosecuting the damages portion of the

case during that period was that the damages might not be worth pursuing. The Plaintiffs have commenced a suit for damages, have neglected it for over a year, do not want to go forward at this time, but seek the ability to file the same claim again should they change their mind.

In response to my request that the Plaintiffs indicate whether they wished to proceed in this Court or have the matter dismissed with prejudice, Plaintiffs' counsel filed another letter on July 3, 2013. Counsel explained that

[T]he equitable claims which brought my clients to the Court of Chancery have been rendered moot by circumstances and therefore the Court of Chancery no longer has jurisdiction. My clients do however, have monetary claims they could pursue in a court of law. Based on our assessment of damages however, it is not practical or cost effective for my clients to pursue those claims in a court of law at this time. Notwithstanding that damages analysis, the parties are still in privity with one another by virtue of the lease. Because of that relationship and its continuation, other claims or damages may arise which are, or could be, related to the claims made herein. Therefore, we seek to have the matter dismissed from the Court of Chancery, without prejudice, so that my clients' rights are not prejudiced in the future.⁵

⁵ Letter from Plaintiff's Counsel to Vice Chancellor Glasscock 1 (July 3, 2013). The suggestion in the July 3 letter from Plaintiff's counsel that this Court is without further jurisdiction is incorrect. If this matter were to proceed without the equitable claims, I could either decide it under the Court's ancillary jurisdiction or, if judicial and litigants' economy would be served thereby, allow transfer to a court of law. *E.g. Medek v. Medek*, 2008 WL 4261017, at *7-*8 (Del. Ch. Sept. 14, 2008). Notably, the Plaintiffs have *not* sought transfer of their claims to a court of law. *See Nyce v. Stella*, 1996 WL 944887 (Del. Super. Apr. 1, 1996) (dismissing legal action on res judicata grounds where a prior Chancery action was dismissed after denial of request to transfer to Superior Court). Finally, if it is the Plaintiffs' concern that *new* causes of action may arise under the lease between the parties, a dismissal with prejudice here is not res judicata with respect to such claims.

In other words, faced with a decision to go forward or have the case dismissed with prejudice, the Plaintiffs choose to have the case dismissed *without* prejudice. I am reminded of the character in Joseph Heller’s novel *Catch-22* who, challenged with Emiliano Zapata’s famous aphorism—it is better to die on your feet than live on your knees—replied that it is better to live on your feet than die on your knees.⁶ Though fictional characters may be able to reject two unpleasant options in favor of a third of their own invention, in the real world litigants may be stuck with their catch-22.

So it is here. This matter has been long pending. The monetary claims have not been litigated in a timely fashion. The Plaintiffs refuse to pursue their cause of action at this time, yet give no suggestion of when further litigation may be expected. The purpose of Rule 41(e) is to allow this Court to manage its docket, to require those bringing suit here to litigate or quit, and, with due regard to the Court’s preference that litigation proceed on the merits, to allow defendants before this Court finality in the face of dilatory prosecution. Therefore, “the very function of a dismissal for failure to prosecute is to have the dismissal be with prejudice.”⁷ The Defendants deserve a resolution of this matter. As I made clear in my July 2, 2013 letter, I was willing to entertain a request to move the litigation forward, notwithstanding the lack of prosecution for a period of more than 12 months.

⁶ Joseph Heller, *Catch-22*, at 248 (1994).

⁷ *Nyce*, at 4.

Having concluded that the game is not worth the candle, the Plaintiffs have declined the opportunity to go forward. Therefore, this matter is dismissed with prejudice.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III